IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

MEREDITH CHADWICK RAY and PHILLIP RAY,)
Plaintiffs,)
V.) Civil Action No.: 3:07CV175-WHA
FORD MOTOR COMPANY,)
Defendant.)

MOTION TO TRANSFER VENUE

COMES NOW Defendant, Ford Motor Company ("Ford"), and files its Motion to Transfer Venue requesting this Court to transfer this action to the United States District Court for the Middle District of Alabama, Eastern Division pursuant to 28 U.S.C.S. § 1404(b). In support of its Motion, the Defendant would show unto the Court as follows:

- 1. Plaintiffs filed their Complaint in the United States District Court for the Middle District of Alabama, Northern Division on or about March 6, 2007. There are no allegations in the Complaint with respect to the Plaintiffs' residence or the occurrence of the accident which otherwise suggests that venue would be appropriate in the Northern Division of the Middle District of Alabama.
- 2. As this Court is aware, the Eastern Division of the Middle District of Alabama encompasses Lee, Chambers and Tallapoosa counties. 28 U.S.C. § 81(b)(3).
- It is undisputed that Plaintiffs are residents of Chambers County. (See 3. Complaint, ¶¶ 1-2).
- 4. It is further undisputed that the automotive accident from which this case arises occurred in Lee County, Alabama. (See Alabama Uniform Traffic Accident Report attached hereto as Exhibit "A").

- 5. This automotive product liability case alleges that the subject 2002 Mercury Moutaineer is defective and unreasonably dangerous under Alabama substantive law. According to the dealership materials relating to the purchase of the vehicle, the vehicle was purchased in Tallapoosa County, Alabama. (See Dealership Materials attached hereto as Exhibit "B").
- 6. Ford preserved its defense of improper venue by pleading the same in its Answer. (See Defendant Ford's Answer).
- 7. Under 28 U.S.C. §1404, the transfer of an action from one division to another division within the same district can be made for the convenience of the parties and witnesses and in the interest of justice. 28 U.S.C. §1404 states:
 - (a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.
 - (b) Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which it is pending to any other division in the same district.

(28 U.S.C. 1404(a), (b)).

8. The United States Court of Appeals for the Eleventh Circuit has held that a defendant who is dissatisfied with the plaintiff's choice of venue may attempt to transfer to another division or district. *Hollis v. Fla. State Univ.*, 259 F.3d 1295, 1296 (11th Cir. 2001). Federal courts have consistently held that under 28 U.S.C.S. §1404(b), a defendant may transfer an action to another division within the same district. *See e.g., Weber v. Coney*, 642 F.2d 91, 93 (5th Cir. 1981); *Tapia v. Dugger*, No. SA-06-CA-0147-XR, 2006 WL 2620530, at *2 (W.D. Tex. Sept. 7, 2006); *Clear Channel Outdoor, Inc. v. Rubloff Oakridge Algonquin*, No. 03 C 3063, 2003 WL 2238299, at *3 (N.D. III. Oct. 16, 2003); *White v. ABCO Engineering Corp.*, 199 F.3d 140, 143 (3d Cir. 1999); *Clinton Foods, Inc. v. United States*, 188 F.2d 289, 293 (4th Cir.), cert. denied, 342 U.S. 825 (1951).

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9. Courts have held that the determination of a §1404(b) transfer should be made

according to the same standards that govern a §1404(a) transfer - convenience and justice.

See 28 U.S.C.S. §1404(a); Tapia, 2006 WL 2620530, at *3; Clear Channel Outdoor, Inc., 2003

WL 22382999, at *3. Because no part of the events comprising the subject of this litigation

occurred in the Northern Division of the Middle District of Alabama, venue in the Northern

Division is both unjust and inconvenient. The Plaintiffs reside in the Eastern Division of the

Middle District of Alabama; the accident that is the subject of this litigation occurred in the

Eastern Division of the Middle District of Alabama; the vehicle involved in the accident was

purchased by the Plaintiffs in the Eastern Division of the Middle District of Alabama; and all

witnesses of the accident likely reside in the Eastern Division of the Middle District of Alabama.

The facts of the case indicate that there is no connection between this case and the Northern

Division of the Middle District of Alabama. As such, there are no justifiable grounds for the

action being filed in the Northern Division of the Middle District of Alabama. Thus, the Plaintiffs'

decision to file this case in the Northern Division seems to be a clear example of forum

shopping.

10. Pursuant to 28 U.S.C. §1404(b), for the convenience of all interested parties and

in the interest of justice, this action is due to be transferred to the Eastern Division of the Middle

District of Alabama.

WHEREFORE, PREMISES CONSIDERED, Defendant Ford Motor Company

respectfully requests this Court to enter an Order transferring this case to the Eastern Division

of the Middle District of Alabama.

/s/ Bradley J. McGiboney

D. Alan Thomas (dat@hfsllp.com)

ASB-8351-T77D

Bradley J. McGiboney (bjm@hfsllp.com)

ASB-4434-B60M

OF COUNSEL:

Huie, Fernambucq & Stewart, LLP Three Protective Center 2801 Highway 280 South, Suite 200 Birmingham, Alabama 35223 (205) 251-1193

ATTORNEYS FOR DEFENDANT, FORD MOTOR COMPANY

ORAL ARGUMENT REQUESTED

CERTIFICATE OF SERVICE

I hereby certify that I have this date electronically filed the foregoing document with the Clerk of Court using the CM/ECF system to the following CM/ECF participants:

D. Michael Andrews, Esq. BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C. P. O. Box 4160 Montgomery, AL 36104

This 3rd day of July, 2007.

/s/ Bradley J. McGiboney Of Counsel

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RAY-0000001 — PRIVATE PROFERTY -Page 1 of 2 AS1-27 ABAMA UNIFORM TRAFFIC ACCIDENT REPORT REV. 1/91 DPS Accident No Shaded Areas To Be Used By Date Processing Only Sheet I of | Sheet[s] Microfilm Na. __ LOCAL CASE NO. 06 - 0035233 Day of Week County Highway Classification: 04/21 2006 M T W TH M-Municipal PM (B) S-State 1- interstate Month Day &- Private Prop. Yebs (D 5 5 43 OPFLIKA F-Federat C-County 01 On Street, Read or Highway 0-Other At Intersection of or Between (Node 1) Dierturad
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99W	.AM/FM CASSETTE CD .3RD ROW SEAT PACKAGE 4.6L SOHC V8 ENGINE	695	00	591	00
T44 X45	AUTOMATIC OVERDRIVE TRANS .P245/70R16 BSW A/S TIRES 3.55 RATIO REGULAR AXLE		1 1 1		1 1 1
	FRONT LICENSE PLATE BRACKET	205	NC	NC 336	.00
186	RUNNING BOARDS PREM CAST ALUM WHEELS 16X7		1		1
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G	AUTO LAMP HEADLAMPS	655	00	557	00
G	SPT BKT LEATHER TRIMMED TOTAL VEHICLE & OPTIONS	31290	00	28376	100
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335.00	29360.57	940.00	285.00	28	28135.57		2909	0.67
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OLD TO								
Tallapoosa Ford P.O. BOX 340 Alexander City		26U017 AL 35011		T.O.	76	STATE		
				2	6	AL	CS02	
SHIP TO (IF OTHER THAN ABOVE)				DATE IN			1TEM NUMBER 26-0607	TRIM TR
			SHIP T	SHIP THROUGH				

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